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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re J.T. et al., Persons Coming Under the
Juvenile Court Law.

H042571
(Santa Clara County
Super. Ct. Nos. 115JD23235,
115JD23236)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

J. T.,

Defendant and Appellant.

On May 4, 2015, Gilroy police placed three male children, 15-year-old P.H., 13-year-old J.T., and 10-year-old D.T. (collectively, the minors) into protective custody after T.T., their mother (Mother), was arrested after having physically abused D.T. Thereafter, the Santa Clara County Department of Family and Children's Services (Department) filed three separate petitions under Welfare and Institutions Code section 300.¹

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise stated.

The Department alleged in amended petitions that the minors had suffered, or that there was a substantial danger they would suffer, serious physical harm inflicted nonaccidentally (§ 300, subd. (a); § 300(a)) as a result of Mother's actions. The Department also alleged that (1) Mother, (2) J.T., the father of J.T. and D.T. (Father), and (3) A.H. (the father of P.H.) had failed to supervise and protect the minors (§ 300, subd. (b); § 300(b)). And the Department alleged under subdivision (c) of section 300 (§ 300(c)) that the minors were suffering, or were at substantial risk of suffering, serious emotional damage evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior as a result of the parents' conduct.

The juvenile court sustained the allegations of the amended petitions at a jurisdictional/dispositional hearing on June 12, 2015. It adjudicated the minors to be dependents of the court to remain in Mother's care under a family maintenance plan.

Father appeals the jurisdictional/dispositional orders entered in the cases of his two sons, J.T. and D.T. An order from a jurisdictional/dispositional hearing is one from which an appeal lies. (§ 395; *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150.) Father contends the record does not contain substantial evidence to support the juvenile court's findings that (1) he had engaged in the past in acts of domestic violence with Mother that were witnessed by the minors; (2) the minors were presently at risk based upon their prior exposure to domestic violence; (3) the alleged past exposure to domestic violence had caused the minors emotional harm; (4) he had killed dogs in the minors' presence; and (5) he had failed to protect the minors from Mother's injurious conduct.

Although Father's claims, if meritorious, would not result in a reversal of the orders, we will nonetheless exercise our discretion to consider them. We hold the record does not contain substantial evidence to support the domestic violence allegations concerning Father. We likewise hold the record does not contain substantial evidence to support the allegations that Father killed dogs in the minors' presence. Lastly, we hold that Father's challenge to the court's order sustaining the allegation that he failed to

protect the minors from Mother's injurious conduct (§ 300(b)) is barred under the doctrines of forfeiture and invited error. Accordingly, we will direct that the orders in these two dependency proceedings be modified to strike the court's findings in which it sustained the domestic violence and dog killing allegations against Father. We will affirm the jurisdictional/dispositional orders as modified.

FACTS AND PROCEDURAL HISTORY

In petitions filed on May 6, 2015, the Department alleged under section 300(a) that the minors had suffered, or that there was a substantial danger they would suffer, serious physical harm inflicted nonaccidentally. The Department made this allegation because Mother had struck D.T. with a belt, leaving bruises on his back, and she had repeatedly physically abused the minors in the past. It was alleged further that Mother had failed to supervise or protect the minors (§ 300(b)) in that she had (1) physically abused them, (2) failed to meet their medical and educational needs, (3) failed to participate in previously offered services, (4) exposed the minors to domestic violence in that she had been a victim of domestic violence by Father and by A.H., and (5) failed to complete victims' services, thereby putting herself at risk in future relationships and exposing the minors to future domestic violence. The Department also alleged under section 300(b) that Father and A.H. had failed to supervise and protect the minors, in that the whereabouts of both A.H. and Father were unknown, and they had not taken steps to ensure the safety of the minors in Mother's care. And finally, the Department alleged that Father had failed to provide for the support of D.T. and J.T. (§ 300, subd. (g); § 300(g).) The court ordered the minors detained.

The Department amended the three petitions. It added allegations under section 300(c) that the minors were suffering, or were at substantial risk of suffering, serious emotional damage evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior as a result of the parents' conduct. The Department added allegations under both subdivisions (b) and (c) of section 300 that the minors had been

repeatedly exposed to domestic violence and had witnessed dogs being killed. As a result, the Department alleged the minors were displaying emotional damage in the form of physical and verbal aggression. Furthermore, D.T. had been diagnosed with Post-Traumatic Stress Disorder (PTSD) because of domestic violence exposure. The Department also replaced the allegation that Father's whereabouts were unknown with the allegation under section 300(c) that he had failed to ensure the minor's safety in Mother's care, and it deleted the allegations under section 300(g) (failure to provide support). On June 2, the court ordered the minors returned to Mother's care.

At the jurisdictional/dispositional hearing on June 12, 2015, the court received into evidence the report of the social worker assigned to the case (discussed below) and an addendum. Mother submitted the matter on the basis of the Department's report. Father, through counsel, asserted that the Department had failed to meet its burden of proving certain allegations in the amended petitions, including allegations that the minors had witnessed domestic violence between Mother and Father.

The court sustained the allegations of the petitions. It adjudicated the minors to be dependents of the court, ordered the minors to remain in Mother's custody, and ordered a family maintenance plan requiring Mother to participate in a number of services. The court also ordered that Father receive unsupervised visitation a minimum of once per week, via telephone only.

DISCUSSION

I. Applicable Law

A. General Dependency Principles

Section 300 et seq. provides "a comprehensive statutory scheme establishing procedures for the juvenile court to follow when and after a child is removed from the home for the child's welfare. [Citations.]" (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) As our high court has explained: "The objective of the dependency scheme is to protect abused or neglected children and those at substantial risk thereof and to provide

permanent, stable homes if those children cannot be returned home within a prescribed period of time. [Citations.] Although a parent’s interest in the care, custody and companionship of a child is a liberty interest that may not be interfered with in the absence of a compelling state interest, the welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect. [Citations.] The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful. [Citations.] This interest is a compelling one. [Citation.]” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

The court at the jurisdictional hearing must first determine whether the child, by a preponderance of the evidence, is a person described under section 300 as coming within the court’s jurisdiction. (§ 355, subd. (a); see also *In re A.G.* (2013) 220 Cal.App.4th 675, 682.) Once such a finding has been made, the court, at a dispositional hearing, must hear evidence to decide the child’s disposition, i.e., whether he or she will remain in, or be removed from, the home, and the nature and extent of any limitations that will be placed upon the parents’ control over the child, including educational or developmental decisions. (§ 361, subd. (a).) If at the dispositional hearing the court determines that removal of the child from the custody of the parent or guardian is appropriate, such removal order must be based upon clear and convincing evidence establishing that one of five statutory circumstances exists. (§ 361, subd. (c).) But if the court determines the child is to remain in the home, the dispositional order need only be based upon a preponderance of the evidence. (*In re Jeremy C.* (1980) 109 Cal.App.3d 384, 394, fn. 10.)

B. Standard of Review

We review the court’s jurisdictional findings for substantial evidence. (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 982.) As summarized by the California Supreme Court: “ ‘In reviewing a challenge to the sufficiency of the evidence supporting the

jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.]’ ” (*In re I.J.* (2013) 56 Cal.4th 766, 773, quoting *In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

This standard is a deferential one. (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589 [“substantial evidence standard of review is generally considered the most difficult standard of review to meet, as it should be, because it is not the function of the reviewing court to determine the facts”].) But “ ‘substantial evidence is not synonymous with *any* evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] Furthermore, “[w]hile substantial evidence may consist of inferences, such inferences must be ‘a product of logic and reason’ and ‘must rest on the evidence’ [citation]; *inferences that are the result of mere speculation or conjecture cannot support a finding* [citations].” [Citation.] “The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.” [Citation.] ’ ” (*In re David M.* (2005) 134 Cal.App.4th 822, 828, quoting *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394, original italics.)

II. Father’s Contentions Are Cognizable on Appeal

Father notes that he does not contest all of the jurisdictional findings made against him, and that Mother has not filed a separate appeal from the jurisdictional order. Accordingly, citing *In re I.A.* (2011) 201 Cal.App.4th 1484, he concedes that regardless of the outcome of his appeal, the jurisdictional order will not be reversed. He nonetheless requests that this court exercise its discretion to hear the merits of his appeal.

The court in *In re I.A.* explained that because the principal focus in a dependency proceeding is on the child, “it is necessary only for the court to find that one parent’s

conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child. [Citations.] Once the child is found to be endangered in the manner described by one of the subdivisions of section 300 . . . the child comes within the court’s jurisdiction, even if the child was not in the physical custody of one or both parents at the time the jurisdictional events occurred. [Citation.] For jurisdictional purposes, it is irrelevant which parent created those circumstances. A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established. [Citation.] As a result, it is commonly said that a jurisdictional finding involving one parent is ‘ “good against both. More accurately, the minor is a dependent if the actions of either parent bring [him or her] within one of the statutory definitions of a dependent.” ’ [Citation.] For this reason, an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence. [Citations.]” (*In re I.A.*, *supra*, 201 Cal.App.4th at pp. 1491-1492.)

In a number of instances, however, appellate courts have deemed it appropriate to exercise their discretion to consider a matter where, as is true here, a successful claim would not result in reversal of the jurisdictional order. (See, e.g., *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452; *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763; *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015.) The mother in *In re M.W.*, for example, conceded jurisdictional findings based upon her substance abuse but challenged other findings in the jurisdictional and dispositional order. She challenged the findings that (1) her failure to obtain a protective order after a six-year-old domestic violence incident had exposed the children to a current risk of harm, and (2) her actual or constructive knowledge of the father’s criminal history and his sex offender status placed the children at risk of harm. (*In re M.W.*, *supra*, 238 Cal.App.4th at p. 1446.) The appellate court

ultimately concluded there was no substantial evidence to support either finding. (*Id.* at pp. 1453-1457.)

Before reaching the merits of her claims, the *In re M.W.* court had to determine as a threshold matter whether it should decide the controversy even though resolution of these claims would not result in a reversal of the order. (*In re M.W.*, *supra*, 238 Cal.App.4th at p. 1452.) The court reasoned: “As a general rule, a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings. [Citation.] We nonetheless retain discretion to consider the merits of a parent’s appeal [citation], and often do so when the finding ‘(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) “could have other consequences for [the appellant], beyond jurisdiction” [citation]’ [Citations.] [¶] We agree with mother that merits review is warranted here. The findings that mother knowingly or negligently exposed her children to a substantial risk of physical and sexual abuse are pernicious. The finding . . . that mother failed to protect the children from a substantial risk of sexual abuse . . . carries a particular stigma. The findings . . . that she failed to protect the children by declining to get a restraining order in 2007, thereby exposing them to a current risk of physical harm . . . could potentially impact the current or future dependency proceedings. Further, ‘refusal to address . . . jurisdictional errors on appeal . . . has the undesirable result of insulating erroneous or arbitrary rulings from review.’ [Citation.]” (*Ibid.*)

Citing *In re I.A.*, *supra*, 201 Cal.App.4th 1484, the Department contends this is not an appropriate case for this court to exercise its discretion to decide Father’s challenges. In *In re I.A.*, the appellate court dismissed the appeal, concluding “the issues Father’s appeal raises are ‘ “abstract or academic questions of law” ’ [citation], since we cannot render any relief to Father that would have any practical, tangible impact on his position

in the dependency proceeding.” (*Id.* at p. 1492.) The controversy presented here, however, is neither abstract nor academic.

The allegations that the minors had witnessed Father committing acts of domestic violence and that they were exposed to the killing of dogs—which allegations were found true in the court’s order—“are pernicious.” (*In re M.W.*, *supra*, 238 Cal.App.4th at p. 1452; cf. Fam. Code, § 3044, subd. (a) [rebuttable presumption that where parent is found to have committed domestic violence against other party, custody to parent is not in child’s best interest].) We come to this conclusion because the dependency proceedings are ongoing, and findings adverse to Father have the potential to negatively influence future rulings of the court vis-à-vis Father, such as rulings concerning the nature, scope, and frequency of visitation. We will therefore exercise our discretion to consider Father’s appellate challenges because the adverse findings of which he complains “‘could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or . . . “could have other consequences for [the appellant], beyond jurisdiction” [citation]’ ” (*In re M.W.*, p. 1452.)

III. Court’s Findings Not Supported by Substantial Evidence

A. Background

At the jurisdictional/dispositional hearing on June 12, 2015, the Department’s counsel indicated she would “submit the matter on the social worker’s reports.” The court received into evidence the jurisdiction/disposition report and an addendum to the report. No other evidence was presented at the hearing.

Father did not attend the hearing, but his counsel appeared and argued the matter. Father’s counsel indicated that Father lived in Alabama. Counsel stated he was aware of his client’s position and was permitted to go forward in his client’s absence. He asserted that the Department had failed to meet its burden of proving by a preponderance of the evidence that the minors had witnessed Father engage in acts of domestic violence. He noted that Father disputed there had been any physical violence in the home. He also

argued there was a lack of evidence the minors' emotional problems were the result of exposure to domestic violence. And he argued that the allegation concerning the minors' exposure to the killing of dogs should not be sustained. He explained that the dog killing allegation had originated from an incident in which Father took P.H.—not Father's biological child—hunting, and a dog had to be put down when it was injured during the hunt.

Mother attended the hearing and was represented by counsel. Mother's counsel indicated that Mother was willing to submit the matter and had signed a waiver, which is part of the record. Mother's counsel then stated: “[O]ne of the reasons that [Mother] is submitting today is that she understands how difficult it can be for a family when somebody has to get up and testify about past events.” She continued: “[Mother] explained what happened to the social worker. The social worker included it in the report. If asked to testify, [Mother] would testify to the violence perpetrated by [Father] against her in front of the children but was submitting in hopes of having to not relive that horror. She does not want to go through it again. And she stands by the statements she provided to the Department in the report . . . Her answer and version of events is [*sic*] included in the report, and that's why she prefer[s] the Court read the report and make its decision based on the information she provided there.”

Minor's counsel concurred in the Department's recommendations regarding jurisdiction. She stated that it appeared “there is some evidence in the report to support some kind of domestic violence perpetrated by [Father] against the mother in this case.” She stated further that she would not oppose the court's striking the allegations in the petitions “about witnessing dogs being killed.”

Counsel for the Department argued that the record contained sufficient evidence that the minors had witnessed Father's multiple acts of domestic violence upon Mother. Counsel conceded “that [the Department did] not have a lot of information in the report about domestic violence. The acts . . . did not happen in California or in Santa Clara

County. It was in the past where the family used to live.” But counsel argued that both Mother’s behavior and the minors’ behavior were “both indicative of having been exposed to quite a bit of violence, including domestic violence.” Counsel also addressed the allegation concerning the minors having been exposed to the killing of dogs, indicating that only one incident involving one dog was involved. She stated: “My understanding is this was the family’s dog, and it got injured, and the father shot it to death right in front of the children. That’s a violent act.”

The court found the allegations of the amended petitions true, concluding that based upon what the court had read and heard, the Department had proved the allegations by a preponderance of the evidence. In so finding, the court noted that, had the standard of proof been clear and convincing evidence, it might not have been persuaded to sustain the allegations against Father.

B. The Domestic Violence Allegations

The amended petitions contained domestic violence allegations against Father pursuant to section 300, subdivisions (b) (failure to supervise or protect the minors) and (c) (serious emotional damage suffered by the minors as a result of the parent’s conduct). The Department made identical allegations under both subdivisions that “[M]other has been a victim of repeated domestic violence. Both [A.H.] and [Father] perpetrated domestic violence against the mother during their relationships with her, including physically beating her, causing . . . facial injuries.” The Department also alleged in the amended petitions under section 300, subdivisions (b) and (c), that “the children have been repeatedly exposed to violence, including seeing domestic violence between their parents The children are now displaying symptoms of emotional damage including physical and verbal aggression. [D.T.] is diagnosed with PTSD due to the domestic violence exposure.”

The sole evidentiary support in the record for the domestic violence allegations is the social worker’s jurisdiction/disposition report. As noted earlier, the Department’s

counsel indicated that Mother was prepared to testify to statements attributed to her in the report, if necessary. There are nine statements in the report concerning Father's alleged domestic violence. They are as follows:

(1) "The mother reported that the children witnessed domestic violence between herself and [D.T.'s] father [Father], who lives in Alabama . . ."

(2) "On 5/5/15, the mother reported to this worker that both [A.H., father of P.H.] and [Father, father of J.T. and D.T.] had physically beaten her, causing her facial injuries during their relationships together. The mother reported that all three children were exposed to the domestic violence."

(3) "On 5/16/15, the maternal grandmother reported to this worker that . . . the boys witnessed a lot of violence when they were living in Mississippi and Alabama. The grandmother did not elaborate on the type of violence but stated due to the way the mother was treated, she 'never wants to go back.'"

(4) "On 5/21/15, [D.T.'s] therapist, Ms. Ann Hawkins_[,] reported to this worker that on 4/28/15_[,] she added Post Traumatic Stress Disorder (PTSD) to [D.T.'s] initial diagnosis of Attention Deficit/Hyperactivity Disorder . . . as she learned more about the trauma he has experienced. She reported that '[D.T.] has witnessed domestic violence between his parents . . .'"

(5) "On 5/22/15, [P.H.'s] therapist, Mr. Patrick Foreman, reported that the boys 'have witnessed a lot of domestic violence between their parents . . .'"

(6) "On 5/5/15, [Father] reported to this worker . . . that the boys have been exposed to 'a lot of hollering, yelling and screaming' between he [sic] and [Mother] but never physical [sic]. [Father] stated 'that was wrong but it happened.'"

(7) "The [maternal] grandmother reported that both she and her daughters 'were around a lot of violence and that the women were not treated well in

Mississippi’ and neither she nor her daughters plan to ‘ever go back to Mississippi.’ ”

(8) “[Mother] has experienced domestic violence in her relationship with both A.H. and [Father].”

(9) “The children have a long history of being exposed to violence, including domestic violence between their parents, which has negatively impacted their emotional well-being.”

This evidence is insufficient to support the juvenile court’s findings that the minors had witnessed acts of domestic violence between Mother and Father. It cannot be determined from the social worker’s report concerning the alleged acts of Father’s domestic violence (1) when they occurred, (2) the frequency or number of the acts, (3) the severity of the acts, (4) whether Mother sustained injuries as a result of the acts, (5) whether there is any corroboration of the acts, and, most importantly, (6) the number of instances, if any, in which J.T. and/or D.T. witnessed them.

Because the statements in the report refer to domestic violence in general terms or combine alleged violent acts attributable to Father with those attributable to A.H., we are unable to assess the evidence against Father specifically. For instance, the statement “[t]he mother reported that all three children were exposed to the domestic violence” is made unclear by the preceding sentence in which Mother stated that Father *and* P.H. had physically beaten her. The statement could be interpreted as indicating that J.T. and P.T. witnessed at least one instance of domestic violence involving Father. But it could also be interpreted as indicating that the minors witnessed domestic violence between Mother and A.H. only. And the social worker’s statement that D.T.’s therapist, Ann Hawkins, “reported that ‘[D.T.] has witnessed domestic violence between his parents . . .’ ” could be construed as D.T. having told Hawkins that he had witnessed Father committing acts of domestic violence upon Mother. But equally plausible is that Hawkins was simply reiterating what the Department had previously written in its reports. And the maternal

grandmother's statement that "the boys witnessed a lot of violence when they were living in Mississippi and Alabama," particularly in light of the social worker's statement that "[t]he grandmother did not elaborate on the type of violence," offers little to support the allegation that the minors had witnessed Father engage in acts of domestic violence upon Mother. The maternal grandmother's statement that she and her daughters had been "around a lot of violence" in Mississippi and planned never to return to that state makes matters even less clear since the record indicates that A.H. lived in Mississippi, while Father lived in Alabama where he and Mother were married and lived for several years.

Since the record contains insufficient evidence to support the allegation that the minors had witnessed Father's acts of domestic violence, it necessarily follows that the allegation that the minors had suffered resulting emotional damage is also unsupported. While the social worker's report includes the statement that Ann Hawkins, D.T.'s therapist, diagnosed D.T. as suffering from PTSD based upon "the trauma he has experienced," in addition to mentioning domestic violence, Hawkins noted that D.T. "experienced sibling abuse, went through devastating tornadoes that took his aunt's life, had an automobile accident and was hospitalized as a toddler, and witnessed dogs being killed." And, as noted, Hawkins's report is ambiguous, as it is unclear whether she recited what D.T. told her or was simply reiterating what she had read in the Department's reports. Furthermore, although the social worker reported that J.T. had "been diagnosed with Depressive Disorder NOS and Anxiety Disorder NOS" based upon "'feelings of sadness, [and he] feels helpless and hopeless, insomnia, low self-esteem . . . , [and] feeling uneasy and feeling panic,'" there is no evidence connecting these emotional difficulties with J.T.'s having witnessed Father's alleged acts domestic violence against Mother.

The Department, as petitioner, bears the burden of proving at the jurisdictional hearing by a preponderance of the evidence that the child is one who comes within the juvenile court's jurisdiction. (*In re A.S.* (2011) 202 Cal.App.4th 237, 244; see also *In re*

Drake M., *supra*, 211 Cal.App.4th at p. 768 [agency bears “burden of proving ‘jurisdictional facts by a preponderance of the evidence’ ”]) As a part of meeting that burden, the Department must “show[] specifically how the minors have been or will be harmed and [such] harm may not be presumed.” (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318.) Additionally, to establish that the juvenile court should exercise jurisdiction over the child under section 300(b) (failure to supervise or protect), the Department must show there is a current risk of serious physical harm to the child, the risk is substantial, and the problem will recur. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1023-1024; see also *In re Savannah M.*, *supra*, 131 Cal.App.4th at p. 1396.)

The Department failed to make the necessary showing here. As noted earlier, “substantial evidence” is not “synonymous with ‘any’ evidence.” (*People v. Bassett* (1968) 69 Cal.2d 122, 139.) “While it is commonly stated that our ‘power’ begins and ends with a determination that there is substantial evidence [citation], this does not mean we must blindly seize any evidence in support of the respondent in order to affirm the judgment. The Court of Appeal ‘was not created . . . merely to echo the determinations of the trial court. A decision supported by a mere scintilla of evidence need not be affirmed on review.’ [Citation.] ‘[I]f the word “substantial” [is to mean] anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with “any” evidence. It must be reasonable . . . , credible, and of solid value’ [Citation.]” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633, footnote omitted (*Kuhn*)). The evidence that the minors had witnessed Father engage in acts of domestic violence upon Mother was neither “ ‘of ponderable legal significance . . . , [nor was it] reasonable . . . , credible, and of solid value.’ ” (*Kuhn, supra*, 22 Cal.App.4th at p. 1633.)

C. Killing of Dogs Allegation

The amended petitions contained allegations against Father that the minors witnessed the killing of dogs. The Department made identical allegations under both

subdivisions (b) and (c) of section 300 that “the children have been repeatedly exposed to violence, including . . . witnessing dogs being killed. The children are now displaying symptoms of emotional damage including physical and verbal aggression.”

The social worker’s report contains the following evidence in support of these allegations:

(1) “On 5/21/15, [D.T.’s] therapist, Ms. Ann Hawkins . . . reported that ‘[D.T.] has . . . witnessed dogs being killed.’ ”

(2) “On 5/22/15, [P.H.’s] therapist, Mr. Patrick Foreman, reported that the boys ‘ . . . were around a lot of guns and hunting and killing animals.’ ”

(3) “On 5/5/15, [Father] reported to this worker that the boys grew up around hunting and fishing . . . [Father reported] that the boys have once witnessed ‘finishing a dog that was dying.’ ”

Noting the stipulation of the Department’s counsel at the hearing that the allegations concern only one dog and one incident, there was substantial evidence supporting the allegation that the minors had witnessed the killing of one dog in an incident involving Father. We note a discrepancy between the social worker’s report and the representation made at the hearing by Father’s counsel as to whether all three minors witnessed the event. Although the social worker reported that Father told her that “the boys” witnessed the event, Father’s counsel stated that only P.H. observed the dog being “put down.” Even if this argument by counsel were considered evidence, the juvenile court was justified in crediting the social worker’s report indicating that “the boys” witnessed the event. (See *In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

But the Department also alleged under subdivisions (b) and (c) of section 300 that the minors were suffering emotional damage as a result of having been exposed to the killing of a dog. There was no substantial evidence supporting these allegations. In establishing that the minors came within the juvenile court’s jurisdiction, the Department was required to “show[] specifically how the minors have been or will be harmed and

[such] harm may not be presumed.” (*In re Matthew S.*, *supra*, 41 Cal.App.4th at p. 1318.)

To sustain allegations under section 300(b), the Department was required to show there is a current risk of serious physical harm to the child, the risk is substantial, and the problem will recur. (*In re J.N.*, *supra*, 181 Cal.App.4th at pp. 1023-1024; see also *In re Savannah M.*, *supra*, 131 Cal.App.4th at p. 1396.) There was no showing that (1) the minors’ exposure to the dog being put down resulted in their suffering emotional harm, or (2) there was a substantial risk the minors would be subjected in the future to a similar incident. The evidence supporting these aspects of the allegations was neither “ ‘of ponderable legal significance . . . , [nor of] reasonable . . . , credible, and of solid value.’ ” (*Kuhn*, *supra*, 22 Cal.App.4th at p. 1633.) Therefore, the Department did not carry its burden of proving that allegation.

D. Failure to Protect Allegations

Father also asserts the record does not contain substantial evidence to support the finding that he failed to take steps to ensure the minors’ safety in Mother’s care under subdivision (b) of section 300. We conclude Father has forfeited this challenge.

During the hearing, Father’s counsel stated he had “no argument with” the allegation “as far as [Father’s] negligence in leaving the children in the care of [Mother], which was a risk.” He later reiterated that concession: “[W]e do not contest leaving the children in the care of the mother as being a risk.” The claim on appeal is thus forfeited due to Father’s failure to object below. (*People v. Harris* (2005) 37 Cal.4th 310, 350 [claim that “court overstepped its bounds with respect to the tone, form, and number of questions posed” forfeited because of absence of objection at trial].) Father is also barred from asserting the challenge under the invited error doctrine. (See *In re G.P.* (2014) 227 Cal.App.4th 1180, 1196 [applying doctrine of invited error to bar the father’s appellate contention].)

DISPOSITION

The June 12, 2015 jurisdictional orders are modified to provide that the allegations in the amended petitions under section 300, subdivisions (b) and (c) concerning (1) the minors witnessing Father engage in acts of domestic violence upon Mother, and (2) Father killing a dog in the minors' presence, are not sustained. As modified, the jurisdictional/dispositional orders are affirmed.

Márquez, J.

I CONCUR:

Rushing, P. J.

In re J.T, minors (Santa Clara Co. Dept. of Fam. & Children's Services v. J.T.)
H042571

Grover, J., Concurring

I concur in the judgment affirming the jurisdictional/dispositional orders in these cases, however I would do so without modification. In my view, the record adequately supports the juvenile court's findings which Father challenges on appeal, and discretionary review of those findings by this court is not warranted.

Grover, J.

In re J.T. et al., minors (Santa Clara Co. Dept. of Fam. & Children's Services v. J.T.)
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